IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1576

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

DEAN COAL COMPANY, *Respondent*

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

W. R. PARTON, d/b/a PARTON COAL COMPANY, *Respondent*

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

I

At pages 10, 18 and 22 of their brief respondents dispute UMW's argument that Dean employees entered upon the strike and that this refusal to work was the principal cause of Dean's losses. Respondents term this argument "imaginative" and impugn the integrity of those employees by contending they merely, and without choice, joined the union and the strike to get strike benefits.

Clear answer to respondents' contention is found in the record and in the law. The testimony of one of their

employees, Mit Day, a witness for respondents, serves to illustrate the point. On cross-examination Day testified thusly (871-2a):

> "Q. . . . . Did you want to join the United Mine Workers then or not?
> "A. At that time?
> "Q. At that time, yes, you wanted to join.
> "A. I did.
> "Q. You wanted to get the benefits of it. I assume that is what you wanted to join for, wasn't it?
> "A. Yes.
> "Q. And you did join?
> "A. Yes, sir.
> "Q. A whole group of you met and joined the next day after March 16th, the time after they came up there.
> "A. Yes, I guess it was.
> "Q. And then you got a grocery order.
> "A. Yes, I got grocery orders."

As stated in the petition (p. 6), a clear majority of Dean employees joined the union and remained on strike at the risk of their jobs, even after Dean commenced hiring replacements. They sought to vote in an NLRB election held while the strike was on, but their votes were excluded as being those of replaced strikers (1924a).

It is a little late in the day—eleven years after the fact—to contend these employees were not on strike, or that they did not remain on strike as a matter of choice while other men were going to work and taking the strikers' jobs. As stated in *NLRB* v. *Roberts Brothers* (9th Cir. 1966) 225 F.2d 58, it is "no longer proper to assume that the American employee is a craven individual afraid to stand up and express himself freely on the subject of his own welfare."

Moreover, the union was entitled to use strike benefits to persuade men to join the strike. The right is expressly confirmed by Section 20 of the Clayton Act[1] and again by Section 4 of the Norris-LaGuardia Act.[2] Payment of strike benefits was termed a "normal union function" by this Court in *United Mine Workers* v. *Gibbs,* 383 US 715, 738. Respondents' contentions, as well as the decision below, are in conflict with this principle.[3]

II

No answer is found in respondents' brief to UMW's argument on Norris-LaGuardia's Section 6, nor do respondents point to any evidence which establishes by clear proof that any person was authorized by UMW to commit the unlawful acts complained of.

Respondents argue (p. 21) that UMW field workers were given "full leeway" to organize employees and imply this included the right to use violence. Neither the pages in the record to which respondents refer (687-89a, 1094-97a), nor any other parts of the record support this implication. As stated by one of the field workers, "a field worker has a certain area assigned to him, certain number of local unions, and it is his duty to handle grievances of its members and also help with the local union affairs, also sign up any new members he can in the union, or be whatever as-

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[1] 29 USC § 52, 38 Stat. 730 (see Appendix A hereto).

[2] 29 USC § 104, 47 Stat. 70 (see Appendix A hereto).

[3] Respondents twice point (pp. 15, 22) to the funds supplied the area in 1959 by UMW. The amount was $2,473,000 (691a). What respondents fail to mention, however, is that these funds were used to provide grocery orders for striking miners in parts of Eastern Kentucky as well as Northeastern Tennessee (693a).

sistance he can to anyone who works in the mines in that area (1453a)".

To argue that such a grant of authority somehow carries with it implicit authorization to do lawless acts does violence to the plain language of Section 6, for that Act requires "clear proof" of the authority even of an officer to engage in an unlawful act.

Respondents refer to acts which allegedly occurred in 1950 and 1955 and contend therefrom that "beatings, whippings and other forms of torture" were "matters of custom and traditional practice" on UMW's part. Such custom and practice respondents argue, establishes a grant of "authority" within the meaning of Section 6, as construed in *United Brotherhood of Carpenters* v. *United States,* 330 US 395, 409-10. The argument is misplaced. *Carpenters* expressly dealt with the authority of union officers to negotiate a contract and the "custom and traditional practice" therein considered referred to that aspect of authority. The argument is without merit for an even more basic reason: During the time involved there were from 133 to 533 mines in operation in Tennessee (2283a) and from 4,507 to 8,229 men employed (2288a). In a situation of that magnitude it is neither logical nor permissible to infer authorization to commit violence from the isolated acts of a few men to which respondents refer. Waving the "bloody shirt" is not a substitute for clear proof.

It was said in *United Mine Workers* v. *Gibbs,* 383 US 715, 736, that the "driving force behind Section 6 . . . was the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control." This language has

special application here. And as stated in Mr. Justice Harlan's concurring opinion in *Gibbs,* 383 US at p. 743, Section 6 is directed against "a particular type of inferential proof of authority or satisfaction unacceptable to those who framed the law." We submit it is just that type of inferential proof on which respondents have predicated their case. This judgment, therefore, should be reviewed and not permitted to stand.

III

This Court recently granted certiorari in *Ramsey, et al* v. *United Mine Workers of America,* No. 1179, O.T. 1969, an action under the Sherman Act in which the Sixth Circuit's decision involved construction and application of Section 6. The construction and application of Section 6 in the instant decision is, in our opinion, of even greater general importance to National Labor Policy than the question presented in *Ramsey.* We submit this consideration warrants review herein.

Respectfully submitted,

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June, 1970

APPENDIX

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APPENDIX A

29 USCA Sec. 104 (Sec. 4 of the Norris-LaGuardia Act):

§ 104: ENUMERATION OF SPECIFIC ACTS NOT SUBJECT TO RESTRAINING ORDERS OR INJUNCTIONS

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70.

29 USCA Sec. 52 (Sec. 20 of the Clayton Act):

§ 52: Statutory Restriction of Injunctive Relief

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from,

any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. Oct. 15, 1914, c. 323, § 20, 38 Stat. 738.